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In re Application of
Braeuchle et al.
Application No.: 10/553,166
PCT No.: PCT/DE2004/000404
Int. Filing Date: 03 March 2004
Priority Date: 30 April 2003
Attorney Docket No.: 10191/4036
For: Device For Speed Control And
Distance Control In Motor Vehicles

DECISION

This is with regard to the "Petition Under 37 C.F.R. 1.181(a) To Withdraw Holding Of Abandonment..." filed on 23 July 2008.

BACKGROUND

This international application was filed on 03 March 2004, designated the United States, and claimed an earliest priority date of 30 April 2003. The International Bureau transmitted a copy of the published international application to the USPTO on 11 November 2004. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 30 October 2005. Applicants timely filed *inter alia* the basic national fee on 14 October 2005.

On 05 June 2006, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to counsel, requiring the submission of an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge under 37 CFR 1.492(h).

On 23 June 2008, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to counsel, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements mailed on 05 June 2006.

DISCUSSION

Petitioner requests withdrawal of the holding of abandonment, on the basis of alleged non-receipt of the Notification of Missing Requirements mailed on 05 June 2006. As explained in MPEP 711.03(c), and following *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1971), an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement).

Petitioner states that "The Notification of Missing Requirements mailed on June 5, 2006, was never received from the Patent Office." This statement satisfies requirement (1).

Petitioner further states that “a search of the file jacket and docket records indicates that the ‘Notification of Missing Requirements’ mailed on June 5, 2006 was not received by Kenyon & Kenyon LLP.” This satisfies requirement (2).

Concerning requirement (3), petitioner provides a “Patent Jacket Data Sheet,” a “USPTO docket for the period 20 Nov 2006 to 20 Dec 2006,” and a “File Finder List for Mail Received on” certain dates in June 2006. However, petitioner has not provided the docket record showing where the Notification would have been docketed for response on the initial due date for the response, 07 August 2006 (since 05 August 2006 was a Saturday). A copy of the “USPTO docket for the period” including 07 August 2006 would be an appropriate record to satisfy this requirement. In the absence of such a record showing where the Notification would have been docketed for response on its non-extended due date, it would not be appropriate to conclude that requirement (3) has been satisfied at this time.

Petitioner is advised that the declaration filed on 23 July 2008 is suitable for purposes of compliance with 37 CFR 1.497(a) and (b).

DECISION

The petition is **DISMISSED**, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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